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6 DISTRICT COURT OF GUAM  
7 TERRITORY OF GUAM

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10 TCW SPECIAL CREDITS, et al.,  
11 Plaintiffs,  
12 vs.  
13 F/V CHLOE Z, et al.,  
14 Defendants.

Civil Case No. 96-00055

**ORDER**

15  
16 ROBERT MATOS, et al.,  
17 Plaintiff-Intervenors,  
18 vs.  
19 M/V CHLOE Z, et al.,  
20 Defendants.

21  
22 The court hereby advises the parties that it received the attached letters on July 7, 2008, one  
23 dated June 5, 2008 from Craig Miller, Esq. and a follow up letter dated June 30, 2008 from  
24 Attorney Michael A. Barcott. The court apologizes that it only received the June 5<sup>th</sup> letter on July  
25 7<sup>th</sup> but notes that there were internal routing problems. Those have since been corrected. In light  
26 of this court's concern that immediate action be taken, the court hereby orders the United States  
27 Magistrate Judge to move expeditiously and sets this matter for a status conference on August  
28 19, 2008 at 9:30 a.m.

**SO ORDERED.**



/s/ Frances M. Tydingco-Gatewood  
Chief Judge  
Dated: Jul 07, 2008



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June 5, 2008

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**CHIEF JUDGE'S CHAMBERS  
DISTRICT COURT OF GUAM**

**VIA FACSIMILE AND FIRST CLASS MAIL**  
Fax: (671) 473-9186  
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Hon. Frances Tydingco-Gatewood  
Chief Judge, U.S. District Court of Guam  
4<sup>th</sup> Floor, U.S. Courthouse  
520 West Soledad Avenue  
Hagåtña, Guam 96910

Hon. Joaquin V.E. Manibusan, Jr.  
Magistrate Judge, U.S. District Court of Guam  
4<sup>th</sup> Floor, U.S. Courthouse  
520 West Soledad Avenue  
Hagåtña, Guam 96910

Re: *TCW Special Credits v. Fishing Vessel CHLOE Z*  
U.S. District Court, Territory of Guam, No. 96-0055 (the "Action")

Your Honors:

I write to ask respectfully that the Court take prompt steps to resolve this 12 year old lawsuit. This case has been awaiting for many months a decision on limited final issues. Meanwhile, some \$1,800,000 cash, earning meager interest, remains in the Clerk's registry, to be distributed on judgment. The interests of the remaining parties are being adversely affected because of the delay.

#### Summary of Status of Case and Issues Remaining for Decision.

My client is TCW Special Credits, the holder of the ship mortgage on the F/V CHLOE Z.

The F/V CHLOE Z was arrested at Guam on July 5, 1996, nearly 12 years ago. TCW Special Credits initiated the arrest, in order to foreclose on its ship mortgage lien. At the time of her arrest, the vessel was also subject to other liens, including crewmens' wage liens and provisioners' liens. Also pending were personal injury claims by injured crewmen. The vessel and her fish cargo were sold within a few months of the arrest, and the cash proceeds of the sales were deposited into the Clerk's registry.



Over the years, the case involved protracted litigation over many issues, and especially over two major issues:

First, there was a complex dispute over the amount of wages the crew was entitled to receive under 46 USC § 11107. Following two trials, appeals and a settlement, that issue was fully resolved in 2001.

Second, with respect to injured crewmen Robert Matos and Slobodan Pranjic, there was a dispute over whether their claims were *in personam* only or also *in rem*. If, and to the extent that, the claims were *in rem*, then the awards would be secured by liens against the vessel (and thus against the proceeds of sale of the vessel). The US District Court ruled that those claims were *in personam* only. However, in June 2006, the Ninth Circuit Court of Appeals reversed this Court and ruled in favor of the seamen, thus determining that they hold both *in rem* and *in personam* claims. (There is no issue as to the priority of the *in rem* liens. The Matos and Pranjic liens have priority over TCW's ship mortgage lien.)

At this point, the only remaining issue is the final determination of the amounts of the Matos and Pranjic *in rem* claims. The Matos and Pranjic *in rem* claims, in the amounts as may be finally determined, will be paid from the residual vessel sale proceeds held by the Clerk. As noted, those proceeds are about \$1,800,000. After payment of the Matos and Pranjic liens, the remaining proceeds then will go to TCW Special Credits, as partial payment of its ship mortgage lien (the unpaid deficiency on TCW's ship mortgage lien is more than \$10 million).

As TCW Special Credits understands things, the F/V CHLOE Z accepts that Matos and Pranjic should receive at least the principal amounts of their judgments—Matos in the amount of \$533,469; and Pranjic in the amount of \$621,514—plus certain interest and costs. Matos and Pranjic, however, contend they are owed substantially more, chiefly based on their (disputed) claim of additional categories of interest accrued on their awards.

Thus, the remaining issues require the Court to make a limited number of legal decisions, primarily regarding the awardability of accrued interest. Once the Court decides those questions, F/V CHLOE Z and Claimants Matos and Pranjic then between them should be able to agree on the computations of the final lien amounts.

TCW Special Credits emphasizes that it does not take a position, as such, on the issues relevant to the calculation of the Matos and Pranjic liens. TCW Special Credits is merely a junior lienholder with an interest in the residual vessel sale proceeds.

The relevant issues were briefed and argued to Magistrate Manibusan on April 26, 2007.

By Report and Recommendation dated May 3, 2007 (Docket No. 1623), Magistrate Manibusan recommended, in relevant part, that: (1) the Clerk prepare a report of the vessel sale proceeds held in the Clerk's registry; and (2) any disbursement from the Clerk's registry, as requested by Matos and Pranjic, be deferred until the Chief Judge ruled on the underlying issues involving the correct amount of the Matos and Pranjic liens.

By Order dated July 2, 2007 (Docket No. 1633), the Chief Judge adopted the Magistrate's Report and Recommendation. However, the Chief Judge indicated that the substantive issues involving the correct amount of the Matos and Pranjic liens were to be deferred until the Magistrate had made a further report and recommendation on those issues. Thus, it appears that the matter is now pending before the Magistrate.

As recommended by the Magistrate, and adopted and ordered by the Chief Judge, the Clerk of the Court did file a report on the vessel sale proceeds. The Clerk filed that report on July 5, 2007.

Nothing has occurred since that date.

Requested Procedure.

Each of the remaining parties—the Claimants, the F/V CHLOE Z, and TCW—is represented by stateside counsel. TCW Special Credits believes that this matter can and should be resolved by the Court ordering all off island and local counsel to appear in person for an omnibus hearing on the remaining issues.

An omnibus hearing is appropriate for resolution of the remaining issues, which tend to be intricate and based on the complexities of the huge record of the case, but not particularly complex in legal terms. At an omnibus hearing, all issues can be resolved then and there, including any issues involving the arithmetic of final interest calculations. Counsel should be required to remain on island, at the direction of the Court, until final judgment is entered.

I believe that such an omnibus hearing could be completed efficiently, perhaps in a couple of hours but certainly in less than one-half day, if only all counsel were present before the Court. But, in order to get this done, once and for all, it appears useful and necessary that all counsel be present in person.

TCW Special Credits requests that such omnibus hearing be set as soon as possible.

Prior to sending this letter to the Court, the request contained in this letter was presented to counsel of record for all parties. No party objects to this request. (It is to be noted that Claimants Matos and Pranjic recently have retained new counsel, Mr. Kurt Micklow, of San Francisco, CA. Mr. Micklow is highly familiar with this overall case, since he represented crewmen on the wage claims.)

Thanks to Your Honors for your attention to this request. I am sure that the Court, the Clerk, and Court staff, as well as the parties, also would like to wrap up this long-pending matter.

Hon. Frances Tydingco-Gatewood  
Hon. Joaquin V.E. Manibusan, Jr.  
June 5, 2008  
Page 4

DW

A list of all counsel is shown below.

Very truly yours,

Davis Wright Tremaine LLP

  
Craig Miller

cc: Attorneys for F/V CHLOE Z  
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Mr. Dwight F. Ritter

Hon. Frances Tydingco-Gatewood  
Hon. Joaquin V.E. Manibusan, Jr.  
June 5, 2008  
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MICHAEL A. BARCOTT  
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June 30, 2008

**RECEIVED**

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**CHIEF JUDGE'S CHAMBERS  
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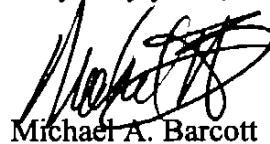
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**Re: TCW Special Credits v. Fishing Vessel CHLOE Z  
U.S. District Court, Territory of Guam, No. 96-0055  
Our File No. 2446.13835**

Dear Judge Tydingco-Gatewood and Judge Manibusan, Jr.:

I am in receipt of Mr. Miller's letter of June 5, 2008. The fishing vessel CHLOE Z, would like this litigation to come to a resolution and we would be pleased to attempt to discuss such a resolution with all parties. Given the distances and times involved, however, the CHLOE Z cannot agree to an in-person conference in Guam with all counsel. We are represented in Guam by Anita Arriola. Ms. Arriola can certainly attend a conference on behalf of CHLOE Z and, regardless of the time stateside, I will be readily available by telephone if such a conference takes place.

Very truly yours,



Michael A. Barcott

MAB:tg

Cc: Craig Miller  
Dwight Ritter  
Bill Banning  
Anita Arriola

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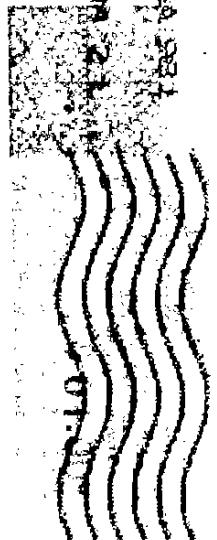
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30 JUN 2008



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835104516 *[Handwritten signature]*